

The complaint

Mrs M complained because Revolut Ltd refused to refund her for transactions which she said she didn't make.

What happened

On 9 November 2021, Mrs M contacted Revolut. She said that she'd given her card details over the phone to make a purchase to an online seller on 5 November, but her details had then been used for unauthorised transactions.

On Mrs M's Revolut account, there was a debit for £100 for a deposit for the item Mrs M had wanted to buy, but she didn't go ahead with the full purchase and the seller said he'd refund her. On 9 November, there were two debits to a food retailer, one for £20 and the other for £2.75. Mrs M asked Revolut to dispute all three payments.

Revolut initiated a chargeback for the £100 payment, and that doesn't form part of this complaint. But it refused to refund Mrs M for the two debits totalling £22.75. These had been contactless payments, and in the Chat, Revolut said that as Mrs M still had her card, it believed only she could have made them. Mrs M said it was impossible as she'd been in a different part of the country from where the payments had been made. The adviser replied that as Mrs M didn't recall making the payments, she'd need to wait to see whether the transactions were completed or reversed.

On 19 November, Mrs M tried again with Revolut's Chat, and was given chargeback forms to complete. Revolut refused her claim for the two debits totalling £22.75. Mrs M said it was physically impossible for her to have carried out the transactions, which had taken place a long way from where she'd been that day, and she said that another bank, which I'll call bank A, had refunded her for similar transactions the same day without a problem. She complained.

In its final response, Revolut refused to refund Mrs M. It said that no traces of fraudulent activity had been found, and the transactions hadn't been out of character. It said that the rules about chargeback claims were set by the card scheme. And it also said that Revolut's own rules about refunds were set out in section 26 of the terms and conditions – but Mrs M's claim didn't meet those requirements.

Mrs M wasn't satisfied and complained to this service.

Our investigator contacted bank A, which Mrs M had said had provided her with an immediate refund for a very similar transaction. Mrs M said that she'd initially given the online seller the details of her account with bank A, but when she was told that payment wouldn't go through, she'd then given the seller her Revolut account. On Mrs R's account with bank A, there had also been a £20 debit to the same food retailer on 9 November. Bank A refunded Mrs M.

But the investigator didn't uphold Mrs M's complaint about Revolut. She looked at Revolut's terms and conditions, which set out the following:

Section 22:

"If you think someone has stolen from your account, let us know as soon as possible through the Revolut app (and no later than 13 months after the money was taken).

We'll pay the money back into your account if:

- *you couldn't have known that your security details or Revolut Card were at risk of being misused;...*
- *the payment was taken after you told us that someone knew your security details or your Revolut Card was lost or stolen, or we didn't give you a way to tell us about this"*

Section 26:

"Your refund rights for Revolut Card payments

You can ask us to refund an amount taken from your account if all of the following apply:

- 1. you agreed that a payment could be taken, but didn't agree the actual amount of the payment.*
- 2. the amount taken is more than you reasonably expected in all the circumstances (including your spending pattern);*
- 3. the person you paid is in the EEA.*
- 4. you didn't authorise the payment directly with us;*
- 5. we and the person you paid did not give you any information about the payment during the four weeks before it was taken; and*
- 6. you ask us for the refund within eight weeks of the payment being taken from your account."*

Our investigator noted that Mrs M had given the online seller her card details on 5 November, and had told Revolut about the disputed transactions when they happened on 9 November. And not all of the six points above applied in Mrs M's case. So the investigator considered Revolut acted in line with its terms and conditions, and didn't need to refund her.

Mrs M wasn't satisfied. She said that she'd been in a different part of the country from where the transactions had taken place. As soon as she'd had notification of them, she'd gone to a branch of her other bank, to report the problem – and she said this should prove that she'd been a long way from where the disputed transactions had taken place. She also sent copies of online messages from the online seller whom she believed was the fraudster. Mrs M said she knew she'd given her card details to that person, but it had been in good faith for a deposit. She asked if the bank branch could be contacted to see whether they remembered her. And she said surely it wasn't right that someone else could use her card details.

Our investigator said that the issue wasn't Mrs M's whereabouts on 9 November 2021. She said it was about whether Revolut had acted fairly and reasonably in line with its terms and conditions, and she thought it had.

Mrs M asked for an ombudsman's decision.

My provisional findings

I issued a provisional decision on this complaint, because I'd come to the same conclusion as the investigator, but for different reasons. So I issued a provisional decision, in order that both sides could make any additional comments if they wished, before the final decision.

Before issuing my provisional decision, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint.

Regulations

There are regulations which govern disputed transactions. The relevant regulations for disputed transactions taking place in November 2021 are the Payment Services Regulations 2017. These say that the payment service provider (here, Revolut) must show the transaction was authenticated. That's the technical part, and here, Revolut has provided the authentication for both disputed transactions. Both record, among other things, that the cardholder was "*present*" – in other words, it wasn't a distance contract. Importantly, the transaction code for both shows that they were carried out as contactless transactions.

The regulations also say that it's necessary to look at whether the card holder authorised the payments. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if he did authorise them. The regulations also say that account holders can still be liable for unauthorised payments under certain circumstances – for example if they've failed to keep their details secure to such an extent that it can be termed "*gross negligence*." I've considered authorisation below.

Whether Mrs M was liable for the disputed payments

In the provisional decision, I recognised that Mrs M said that she gave her card details to the person she suspects of the fraud, in good faith. I accepted that, and I didn't consider giving her card details for a payment counted as "*gross negligence*." Although giving card details over the phone always carries an element of risk, I accepted that Mrs M wouldn't have known that there might be a problem with this individual until the transactions of 9 November. And I saw no evidence to indicate that this individual was, in fact, responsible for the disputed transactions.

I also noted that Revolut said that Mrs M didn't meet the requirements for a chargeback to be submitted on her behalf. Chargeback rules are specific, and are set by the card schemes, not by banks. An example is where goods aren't received – like Mrs M's other claim for a refund of the £100 deposit, which doesn't form part of this complaint. But allegations that an individual may have fraudulently used details supplied by phone, wouldn't fall into the chargeback scheme. So while Revolut was right to say that chargebacks didn't fit this particular dispute, it still had an obligation to act fairly and reasonably, and in line with the requirements of the Payment Services Regulations. This means that it's important whether or not Mrs M authorised the transactions, either herself, or by someone known to her using her card.

What I considered was key to the outcome here was that the two disputed transactions were both carried out on a contactless basis. Mrs M hadn't reported her card lost or stolen, and she said she still had it. Revolut's evidence shows that when the card was used for these two disputed transactions, the machine read the individual chip that was in the card.

With this in mind, and as Mrs M said that she had the card at the time, it was difficult for me to reach any conclusion here other than that it was Mrs M who made these payments. I took on board what Mrs M had said, but there was no evidence to suggest a third party unknown to Mrs M carried out the transactions. I added that in any event, I didn't think it's likely that someone unknown to Mrs M would have taken the trouble to try and replicate the complex technology behind a card's chip to make transactions for such relatively small amounts here.

I recognised that bank A did refund Mrs M for the £20 transaction she disputed with that bank, even though that, too, was contactless. But what I had to decide was whether Revolut acted fairly and reasonably in the individual circumstances of this complaint, and bank A's actions didn't affect my decision about that.

I thought about Mrs M's comments that on 9 November 2021, she was a long way from where the transactions took place. She hadn't been able to provide evidence of this, other than suggesting that staff in the other bank's branch might be able to remember her going in. But I thought that was always unlikely, in a busy branch, and it was even more unlikely at the time of my provisional decision, some months down the line. It would also be extremely unlikely that CCTV would be kept for that length of time. But even if someone at the branch had been able to confirm that Mrs M had gone into the branch on 9 November, it didn't prove that Mrs M didn't, for example, let another person borrow her card, or that someone borrowed it and returned it without Mrs M being aware. And under neither of these scenarios would Revolut be liable under the Payment Services Regulations, because customers have a duty to keep their details secure.

I realised this wouldn't be welcome news for Mrs M, and that she felt strongly about these transactions. But I couldn't see a way around the fact that the computer evidence shows that the genuine card and chip were used for the transactions. In these circumstances, Revolut didn't have any obligation to refund Mrs M. So my provisional decision was that I didn't intend to uphold this complaint.

Responses to my provisional decision

Neither Mrs M, or Revolut, replied to my provisional decision within the timescales set.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, and as neither side replied to the provisional decision, I consider my provisional decision was fair and reasonable in all the circumstances of this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 6 June 2022.

Belinda Knight
Ombudsman